



**Billing Code 6714-01-P**

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Part 325**

#### **RIN 3064-AE73**

#### **Annual Stress Test—Applicability Transition for Covered Banks with \$50 Billion or More in Assets; Technical and Conforming Changes**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) proposes to make several revisions to its stress testing regulation. Consistent with changes already made by the Board of Governors of the Federal Reserve System (Board) and the Office of the Comptroller of the Currency (OCC) to their respective stress testing regulations, the proposed rule would change the transition process for covered banks that become over \$50 billion covered banks. Under the proposed rule, a covered bank that becomes an over \$50 billion covered bank on or before September 30 would become subject to the requirements applicable to an over \$50 billion covered bank beginning on January 1 of the second calendar year after the covered bank becomes an over \$50 billion covered bank. A covered bank that becomes an over \$50 billion covered bank after September 30 would become subject to the requirements applicable to an over \$50 billion covered bank beginning on January 1 of the third calendar year after the covered bank becomes an over \$50 billion covered bank. The proposed rule would also change the range of possible “as-of” dates used in the trading and counterparty position data stress testing component. Lastly, the proposed rule would make certain technical changes to clarify the requirements of the FDIC’s stress testing regulation, and to eliminate obsolete provisions.

**DATES:** Comments must be received on or before [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested parties are encouraged to submit written comments.

Commenters are encouraged to use the title “Annual Stress Test— Applicability Transition for Covered Banks with \$50 Billion or More in Assets; Technical and Conforming Changes” to facilitate the organization and distribution of comments among the Agencies. You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web Site:* <https://www.fdic.gov/regulations/laws/publiccomments/>.  
Follow instructions for submitting comments on the Agency Web Site.
- *E-mail:* [Comments@fdic.gov](mailto:Comments@fdic.gov). Include the RIN number 3064-AE73 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* All comments received must include the agency name and RIN 3064-AE73 for this rulemaking. All comments received will be posted without change to <https://www.fdic.gov/regulations/laws/publiccomments/>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax

Drive, Room E-I002, Arlington, VA 22226 by telephone at 1 (877) 275-3342 or 1 (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:** Ryan Sheller, Section Chief, (202) 412-4861, Large Bank Supervision, Division of Risk Management Supervision; Annmarie Boyd, Counsel, (202) 898-3714, or Benjamin Klein, Counsel, (202) 898-7027, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC, 20429.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> (“Dodd-Frank Act”) requires two types of stress tests. Section 165(i)(1) requires the Board to conduct annual stress tests of holding companies with \$50 billion or more in assets (“supervisory stress tests”). Section 165(i)(2) requires the federal banking agencies to issue regulations requiring financial companies with more than \$10 billion in assets to conduct annual stress tests themselves (“company-run stress tests”). In October 2012, the FDIC, Board, and OCC issued final rules implementing the company-run stress tests.<sup>2</sup> Accordingly, the FDIC regulation at 12 CFR Part 325, Subpart C, implements the stress test requirements of section 165(i)(2) of the Dodd-Frank Act with respect to covered banks.

The Dodd-Frank Act also requires that the FDIC and other federal financial regulatory agencies issue consistent and comparable regulations to implement the

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<sup>1</sup> 12 U.S.C. 5365(i).

<sup>2</sup> 77 FR 62417 (Oct. 15, 2012) (FDIC); 77 FR 62380 (Oct. 12, 2012 (Board)); 77 FR 61238 (Oct. 9, 2012) (OCC).

statutory stress testing requirement.<sup>3</sup> In order to fulfill this requirement and minimize regulatory burden, the FDIC is proposing certain changes to 12 CFR Part 325, Subpart C, as described below, in order to ensure that its stress testing regulation remains consistent and comparable to the regulations enacted by other regulatory agencies, including the Board and the OCC.

## **II. Description of the Proposed Rule**

### **A. New Terminology and Applicability Transition for Covered Banks with \$50 Billion or More in Assets**

Although 12 CFR Part 325, Subpart C applies to all covered banks that exceed \$10 billion in average total consolidated assets, the regulation differentiates between “\$10 billion to \$50 billion covered banks” and “over \$50 billion covered banks.” The proposed rule would change the defined term “over \$50 billion covered bank” to “\$50 billion or over covered bank.” This change would not alter the scope of this defined term and would not change the substantive requirements of the regulation. The new defined term would be a more precise description of the entities included within this category, which includes all state nonmember banks and state savings associations “with average total consolidated assets . . . that are not less than \$50 billion.”<sup>4</sup> While the proposed rule would change the defined term “over \$50 billion covered bank” to “\$50 billion or over covered bank,” this supplementary information section will continue to use the term “over \$50 billion covered bank” since that is the term used in the current regulatory text.

The proposed rule would also change the transition process for a covered bank

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<sup>3</sup> 12 U.S.C. 5365(i)(2)(C).

<sup>4</sup> 12 CFR 325.202(d)(2).

that becomes an “over \$50 billion covered bank.” On February 3, 2017, the Board published a final rule that provided additional time for bank holding companies that cross the \$50 billion asset threshold to comply with the stress testing requirements applicable to bank holding companies of such size.<sup>5</sup> On February 23, 2018, the OCC published a final rule making the same change to its stress testing regulation.<sup>6</sup> The proposed rule would make a parallel amendment to the FDIC’s stress testing regulation.

Under the existing regulation, a \$10 billion to \$50 billion covered bank that migrates to an over \$50 billion covered bank becomes subject to the requirements applicable to over \$50 billion covered banks immediately after satisfying the threshold.<sup>7</sup> Under the proposed rule, a state nonmember bank or state savings association that becomes an over \$50 billion covered bank in the first three quarters of a calendar year would not be subject to the stress testing requirements applicable to over \$50 billion covered banks until the second calendar year after it crosses the threshold. A state nonmember bank or state savings association that becomes an over \$50 billion covered bank in the fourth quarter of a calendar year would not be subject to the stress testing requirements applicable to over \$50 billion covered banks until the third year after it crosses the asset threshold. For example, if a state nonmember bank or state savings association becomes an over \$50 billion covered bank on September 15, 2018, it would need to comply with the requirements applicable to over \$50 billion covered banks

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<sup>5</sup> 82 FR 9308 (Feb. 3, 2017). These expanded transitional arrangements are codified in the Board’s regulations at 12 CFR 252.53(b).

<sup>6</sup> 83 FR 7951 (Feb. 23, 2018).

<sup>7</sup> 12 CFR 325.203(c)(2). A covered bank becomes an over \$50 billion covered bank when its average total consolidated assets, as reported on the covered bank’s Call Reports, for the four most recent consecutive quarters, equals \$50 billion or more.

beginning in 2020 and file the FDIC DFAST-14A in April 2020. However, if a state nonmember bank or a state savings association becomes an over \$50 billion covered bank on October 15, 2018, it would be required to comply with the stress testing requirements applicable to over \$50 billion covered banks beginning in 2021 and file the FDIC DFAST-14A in April 2021. The additional time provided to a state nonmember bank or state savings association that becomes an over \$50 billion covered bank prior to the enactment of the stress testing requirements is unlikely to change the potential compliance burden for those institutions.

The stress testing timeline and transition process for state nonmember banks and state savings associations that become \$10 to \$50 billion covered banks would remain unchanged.

**B. New Range of Possible As-Of Dates for Trading Scenario Component**

Under 12 CFR Part 325, Subpart C, the FDIC may require a covered bank with significant trading activities to include trading and counterparty components in its adverse and severely adverse scenarios. The trading data to be used in this component is as of a date between January 1 and March 1 of a calendar year.<sup>8</sup> On February 3, 2017 the Board published a final rule that extended this range to run from October 1 of the calendar year preceding the year of the stress test to March 1 of the calendar year of the stress test.<sup>9</sup> On February 23, 2018, the OCC published a final rule making the same change to its stress testing regulation.<sup>10</sup> The proposed rule would make the same change to the FDIC's stress testing regulation. Extending this range would increase the FDIC's

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<sup>8</sup> 12 CFR 325.204(c).

<sup>9</sup> 82 FR 9308 (Feb 3, 2017).

<sup>10</sup> 83 FR 7951 (Feb. 23, 2018).

flexibility to choose an appropriate as-of date. The FDIC continues to coordinate its stress testing program with the Board and OCC in order to minimize regulatory burden. Presently, no FDIC-supervised institutions are required to comply with this stress testing requirement so the proposed rule is unlikely to have an immediate effect on FDIC-supervised institutions.

### C. Removal of Obsolete Transition Language

In 2014 the FDIC, in coordination with the Board and OCC, shifted the dates of the annual stress testing cycle by approximately three months, from October 1 to January 1.<sup>11</sup> The FDIC's stress testing regulation continues to include transition language to facilitate this prior schedule shift. Because the transition to the new schedule is now complete, the proposed rule would remove this obsolete transition language.

## **III. Request for Comment**

The FDIC requests comment on all aspects of the proposal.

## **IV. Regulatory Analysis and Procedure**

### **Paperwork Reduction Act**

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the FDIC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. This notice of proposed rulemaking amends 12 CFR part 325, which has an approved information collection under the PRA (OMB Control No. 3064-0189). The FDIC has determined that the proposed rule does not create any new or

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<sup>11</sup> 79 FR 69365 (Nov. 21, 2014).

revise any existing collection of information under section 3504(h) of title 44.

Accordingly, no Paperwork Reduction Act submission will be made to OMB.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.<sup>12</sup> However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration has defined “small entities” to include banking organizations with total assets of less than or equal to \$550 million.<sup>13</sup> For the reasons described below and pursuant to section 605(b) of the RFA, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,637 depository institutions,<sup>14</sup> of which, 2,924 are defined as small banking entities by the terms of the RFA.<sup>15</sup> As discussed in the **SUPPLEMENTARY INFORMATION** above, the proposed changes will only affect institutions with more than \$10 billion in total assets. Therefore, the rule will not affect any small entities. As such, no small state nonmember banks and state savings associations would be affected by the proposal.

The FDIC invites any comments that will further inform the FDIC’s consideration

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<sup>12</sup> 5 U.S.C. 601 *et seq.*

<sup>13</sup> 13 CFR 121.201 (as amended, effective December 2, 2014).

<sup>14</sup> FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

<sup>15</sup> FDIC Call Report, December 31, 2017.



of RFA.

### **Plain Language**

Section 722 of the Gramm-Leach-Bliley Act requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. The Agencies invite comment on how to make this proposed rule easier to understand.

For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

### **List of Subjects in 12 CFR Part 325**

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements, State savings associations, Stress tests.

### **Authority and Issuance**

For the reasons set forth in the preamble, the FDIC proposes to amend 12 CFR Part 325 as follows:

## **PART 325—CAPITAL MAINTENANCE**

1. The authority citation for part 325 continues to read as follows:

AUTHORITY: 12 U.S.C. 5365(i)(2); 12 U.S.C. 5412(b)(2)(C); 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p-1.

### **Subpart C—Annual Stress Test**

2. In subpart C, remove the phrase “over \$50 billion covered bank” from wherever it appears in the subpart, and add in its place the phrase “\$50 billion or over covered bank”.

3. Amend § 325.201(a) by revising paragraph (a) to read as follows:

#### **§325.201 Authority, purpose, and reservation of authority.**

(a) *Authority.* This subpart is issued by the Federal Deposit Insurance Corporation (the “Corporation” or “FDIC”) under 12 U.S.C. 5365(i)(2); 12 U.S.C. 5412(b)(2)(C); 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p-1.

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4. Amend § 325.202 by revising paragraphs (d)(2) and (m) to read as follows:

#### **§ 325.202 Definitions.**

\* \* \* \* \*

(d) \* \* \*

(2) *\$50 billion or over covered bank.* Any state nonmember bank or state savings association with average total consolidated assets calculated as required under this subpart that are not less than \$50 billion.

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(m) *Stress test cycle* means the period beginning January 1 of a calendar year and ending on December 31 of that year.

5. Revise § 325.203 to read as follows:

**§ 325.203 Applicability.**

(a) *Covered banks that become subject to stress testing requirements.* A state nonmember bank or state savings association that becomes a \$10 billion to \$50 billion covered bank on or before March 31 of a given year shall conduct its first annual stress test under this subpart in the next calendar year after the date the state nonmember bank or state savings association becomes a \$10 billion to \$50 billion covered bank, unless that time is extended by the Corporation in writing. A state nonmember bank or state savings association that becomes a \$10 billion to \$50 billion covered bank after March 31 of a given year shall conduct its first annual stress test under this part in the second calendar year after the calendar year in which the state nonmember bank or state savings association becomes a \$10 billion to \$50 billion covered bank, unless that time is extended by the Corporation in writing.

(b) *Ceasing to be a covered bank or changing categories.* (1) A covered bank shall remain subject to the stress test requirements based on its applicable category, as defined in § 325.202, unless and until total consolidated assets of the covered bank fall below the relevant size threshold for each of four consecutive quarters as reported by the covered bank's most recent Call Reports. The calculation shall be effective on the “as of” date of the fourth consecutive Call Report.

(2) Notwithstanding paragraph (b)(1) of this section, a state nonmember bank or state savings association that becomes a \$50 billion or over covered bank, whether by migrating from being a \$10 billion to \$50 billion covered bank or by directly becoming a \$50 billion or over covered bank, after September 30 of a calendar year must comply

with the requirements applicable to a \$50 billion or over covered bank beginning on January 1 of the third calendar year after the state nonmember bank or state savings association becomes a \$50 billion or over covered bank, unless that time is extended by the Corporation in writing. A state nonmember bank or state savings association that becomes a \$50 billion or over covered bank on or before September 30 of a calendar year must comply with the requirements applicable to a \$50 billion or over covered bank beginning on January 1 of the second calendar year after the state nonmember bank or state savings association becomes a \$50 billion or over covered bank, unless that time is extended by the Corporation in writing.

(c) *Covered bank subsidiaries of a bank holding company or savings and loan holding company subject to annual stress test requirements.* (1) Notwithstanding the requirements applicable to covered banks under this section, a covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct an annual company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System may elect to conduct its stress test and report to the FDIC on the same timeline as its parent bank holding company or savings and loan holding company.

(2) A covered bank that elects to conduct its stress test under paragraph (c)(1) of this section will remain subject to the same timeline requirements of its parent company until otherwise approved by the FDIC.

6. Revise § 325.204 to read as follows:

**§ 325.204 Annual stress tests required.**

Each covered bank must conduct the annual stress test under this part subject to the

following requirements:

(a) *Financial data.* A covered bank must use financial data as of December 31 of the previous calendar year.

(b) *Scenarios provided by the Corporation.* In conducting the stress test under this part, each covered bank must use the scenarios provided by the Corporation. The scenarios provided by the Corporation will reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios. The Corporation will provide a description of the scenarios required to be used by each covered bank no later than February 15 of that calendar year.

(c) *Significant trading activities.* The Corporation may require a covered bank with significant trading activities, as determined by the Corporation, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component will be as of a date between October 1 of the previous calendar year and March 1 of that calendar year in which the stress test is performed, and the Corporation will communicate a description of the component to the covered bank no later than March 1 of that calendar year.

7. Amend § 325.206 by revising paragraph (a) to read as follows:

**§ 325.206 Required reports of stress test results to the FDIC and the Board of Governors of the Federal Reserve System.**

(a) *Report required for annual stress test results – (1) \$10 billion to \$50 billion covered bank.* A \$10 billion to \$50 billion covered bank must report to the FDIC and to the Board of Governors of the Federal Reserve System, on or before July 31, the results of the stress test in the manner and form specified by the FDIC.

(2) *\$50 billion or over covered bank.* A \$50 billion or over covered bank must report to the FDIC and to the Board of Governors of the Federal Reserve System, on or before April 5, the results of the stress test in the manner and form specified by the FDIC.

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8. Amend § 325.207 by revising paragraph (a) to read as follows:

**§ 325.207 Publication of disclosures.**

(a) *Publication date* – (1) *\$10 billion to \$50 billion covered bank.* A \$10 billion to \$50 billion covered bank must publish a summary of the results of its annual stress test in the period starting October 15 and ending October 31.

(2) *\$50 billion or over covered bank.* A \$50 billion or over covered bank must publish a summary of the results of its annual stress tests in the period starting June 15 and ending July 15, provided:

(i) Unless the Corporation determines otherwise, if the \$50 billion or over covered bank is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System under 12 CFR part 252, then within the June 15 to July 15 period, such covered bank may not publish the required summary of its annual stress test earlier than the date that the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

(ii) If the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company prior to June 15, then such covered bank may publish its stress test results prior to June 15, but no later

than July 15, through actual publication by the covered bank or through publication by the parent holding company pursuant to paragraph (b) of this section.

\* \* \* \* \*

Dated at Washington, DC on March 20, 2018.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2018-06162 Filed: 3/30/2018 8:45 am; Publication Date: 4/2/2018]